

Service Date: July 19, 2006

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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| IN THE MATTER OF NORTHWESTERN ENERGY,            | ) | UTILITY DIVISION      |
| Application for Approval of 2006 Avoided Cost    | ) | DOCKET NO. D2006.6.94 |
| Compliance Filing -- Schedules QFLT-1 and STPP-1 | ) | ORDER NO. 6753        |

**PROTECTIVE ORDER**

On June 21, 2006, NorthWestern Energy (NWE) filed before the Public Service Commission (PSC) a motion for protective order to govern certain information expected to be filed in the above-entitled proceeding. On June 30, 2006, NWE amended its motion. In its motion as amended NWE identifies one category of information that NWE argues is entitled to protection from uncontrolled public disclosure: details of monthly coal costs and supporting invoices, including monthly commodity cost, transportation, royalty, and adjustments.

NWE's motion is proper in form and includes each of the elements required in a motion for protective order before the PSC. NWE states that it has done a thorough legal and factual examination and has determined the specific items or categories of like items identified are trade secrets or otherwise legally protectible. *ARM 38.2.5007(2)*. NWE states that it has considered that the PSC is a public agency and that there is a presumption of access to documents and information in the PSC's possession. *ARM 38.2.5007(4)(b)(i)*. NWE states that it understands it has the burden of demonstrating that the identified items are confidential information and that it must, within its motion, establish a prima facie showing of confidentiality, factually and legally, and make clear the basis for the claim of confidentiality. *ARM 38.2.5007(3)*. NWE names a contact person regarding the motion and regarding the items to be protected. *ARM 38.2.5007(3)(a)*. NWE has included a complete and specific non-confidential identification of the items or categories of items for which it seeks protection. *ARM 38.2.5007(3)(b)*. For each item or category of like items NWE has supplied what NWE believes is a complete and specific factual basis, including thorough identification and explanation of specific facts, and a complete and

specific legal basis and application of the law to facts. *ARM 38.2.5007(3)(c)*. NWE has included an affidavit that NWE suggests supports the facts, is by a person qualified on the subject matter, and supports the claim of confidentiality of the identified information. *ARM 38.2.5007(3)(c)*. NWE states it has explained, in detail, for each item or category of like items, including thorough facts and legal analysis as it relates in general and in specific, proper application of the element of trade secret. *ARM 38.2.5007(3)(d)*. NWE's motion has been noticed in accordance with *ARM 38.2.5007(8)*.

The PSC determines that NWE has shown good and sufficient cause in fact and law that the information for which protection is requested is entitled to protection from uncontrolled public disclosure. NWE's identified category is protectible pursuant to § 69-3-105, MCA (PSC authority to issue protective orders), as trade secret or other information that must be protected under law. In accordance with § 30-14-402, MCA (statutory definition of "trade secret"), PSC rule *ARM 38.2.5007(4)(b)* identifies the elements of trade secret as: (a) the items or categories identified are information; (b) the information is in fact secret; (c) the information is subject to efforts reasonable under the circumstances to maintain its secrecy; (d) the information is not readily ascertainable by proper means; and (e) the information derives independent economic value from its secrecy or a competitive advantage is derived from its secrecy. NWE has made the required demonstration that these elements exist for NWE's identified category.

The PSC grants NWE's request for protection of the identified information and hereby orders that information submitted in accordance with this order be treated as "confidential information" under the terms of this order and PSC protective order rules, *ARM 38.2.5001* through *38.2.5030*.

Done and dated this 6th day of July, 2006, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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GREG JERGESON, Chairman

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BRAD MOLNAR, Vice-Chairman

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DOUG MOOD, Commissioner

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ROBERT H. RANEY, Commissioner

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THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones  
Commission Secretary

(SEAL)

NOTE: There is no reconsideration of the granting of a protective order. There is a procedure to challenge the provider's claim of confidentiality. See ARM 38.2.5008.

Montana Public Service Commission  
Protective Orders and Protection of Confidential Information

## **Nondisclosure Agreement**

(7-26-00)

ARM 38.2.5012

Docket No. D2006.6.94, Order No. 6753  
Order Action Date: July 6, 2006

I understand that in my capacity as counsel or expert witness for a party to this proceeding before the commission, or as a person otherwise lawfully so entitled, I may be called upon to access, review, and analyze information which is protected as confidential information. I have reviewed ARM 38.2.5001 through 38.2.5030 (commission rules applicable to protection of confidential information) and protective orders governing the protected information that I am entitled to receive. I fully understand, and agree to comply with and be bound by, the terms and conditions thereof. I will neither use nor disclose confidential information except for lawful purposes in accordance with the governing protective order and ARM 38.2.5001 through 38.2.5030 so long as such information remains protected.

I understand that this nondisclosure agreement may be copied and distributed to any person having an interest in it and that it may be retained at the offices of the provider, commission, consumer counsel, any party and may be further and freely distributed.

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Typed or Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of Signature

Business Address:

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\_\_\_\_\_  
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Employer

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Party Represented